



19 MAY 2003

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In re Application of  
OUDERKIRK et al.  
Application No.: 09/890,482  
PCT No.: PCT/US99/018187  
Int. Filing Date: 28 January 1999  
Priority Date: 28 January 1998  
Attorney Docket No.: 53852US013  
For: INFRARED INTERFERENCE FILTER

DECISION ON PETITION

This is a decision on applicants' "Renewed Submission under 37 CFR 1.42" filed 02 May 2003.

**BACKGROUND**

On 28 January 1999, applicants filed international application no. PCT/US99/018187 which claimed a priority date of 28 January 1998. The international application named Andrew J. Ouderkirk; Takashi Harada; Makoto Ishikawa; Akira Yoda; Tatsuya Nakamura; and H. Sanders Gwin as applicant/inventors. A Demand was filed for International Preliminary Examination prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 28 July 2000.

On 26 July 2001, applicants filed a Transmittal Letter for entry into the national stage accompanied, *inter alia*, by: the requisite basic national fee; a copy of the international application; a preliminary amendment; and a petition to revive under 37 CFR 1.137(b). The petition to revive was granted in a decision dated 05 November 2001.

On 08 November 2001, the United States Designated Office (DO/EO/US) mailed a Notification Missing Requirements under 35 CFR 371 (Form PCT/DO/EO/905) indicating that a signed oath/declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) together with a surcharge payment were required. The notification set a two-month time limit in which to respond.

On 10 June 2002, the above-identified application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 08 November 2001 within the time period set therein.

On 14 February 2003, applicants filed a petition under 37 CFR 1.181 which was accompanied by: Completion of Filing Requirement with a declaration and power of attorney dated 08 January 2002; a postcard receipt dated 25 February 2002; and Request and Fee to Amend Inventorship under 37 CFR 1.48(c).

In a decision dated 05 March 2003, applicants' petition to withdraw the holding of abandonment was granted. The petition under 37 CFR 1.42 was dismissed because the declaration was defective under 37 CFR 497(b).

On 02 May 2003 applicants' filed "Renewed Submission under 37 CFR 1.42."

### DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

The declaration filed 02 May 2003 is executed by Yoko Ishikawa as "legal representative" of the deceased inventor, Miakoto Ishikawa. The declaration is acceptable under 37 CFR 1.42 and complies with 37 CFR 1.497(a)-(b). Accordingly, the requirements for entry into national stage under 35 U.S.C. 371(c) were completed as of 02 May 2003.

### CONCLUSION

The application has an international filing date of 28 January 1999, under 35 U.S.C. 363, and a 35 U.S.C. 371(c) date of **02 May 2003**.

The application is being returned to the United States Designated/Elected Office for processing in accordance with this decision.

Thereafter, the application will be forwarded to Art Unit 3662 for decision on the petition under 37 CFR 1.48(c) pursuant to MPEP 201.03.



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